

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from Mississippi (Mr. TAYLOR).

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OLIVER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question are postponed.

# TWENTY-FIRST ANNUAL REPORT OF FEDERAL LABOR RELATIONS AUTHORITY FOR FISCAL YEAR 1999

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Government Reform.

*To the Congress of the United States:*

In accordance with section 701 of the Civil Service Reform Act of 1978 (Public Law 95-454; 5 U.S.C. 7104(e)), I have the pleasure of transmitting to you the Twenty-first Annual Report of the Federal Labor Relations Authority for Fiscal Year 1999.

The report includes information on the cases heard and decisions rendered by the Federal Labor Relations Authority, the General Counsel of the Authority, and the Federal Service Impasses Panel.

WILLIAM J. CLINTON.  
THE WHITE HOUSE, July 26, 2000.

## EDUCATION DEPARTMENT'S MIS- MANAGEMENT OF TAXPAYERS' MONEY

(Mr. SCHAFER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHAFER. Mr. Speaker, I am here on a personal crusade. I came to Congress because I have got five children and I care about their school. They are getting ready to go back to school in August.

A couple of things disturb me, Mr. Speaker. The Department of Education contract employees, some of them, pleaded guilty to participating in a scheme to defraud the Department of more than \$1 million in equipment and false overtime. They illegally procured equipment, including a 61-inch television set, digital cameras, and Gateway computers for the personal use of Department employees and their families.

That is not all. Another fraudulent overtime claim includes a trip to Baltimore to pick up crab cakes for another Department employee. Two more De-

partment employees were recently charged by the Department of Justice with involvement in this scandal, and as many as four other Department employees remain under investigation.

In 1998, the Department could not even audit its books, they were so badly managed. In 1999 when they did audit their books, they got a D minus.

Republicans have a different idea. We want to get dollars to the classroom and out of that bureaucracy over there.

Mr. Speaker, unbeknownst to all but Beltway bureaucrats and a handful of reform minded Members of Congress, the U.S. Department of Education has failed its last two financial audits.

The nationally known and respected accounting firm Ernst and Young has attempted, for fiscal years 1998 and 1999, to determine if the Department of Education has spent the money sent to it by Congress appropriately and lawfully.

The sad truth is, we just don't know. The Department's books were unauditable for FY 1998. This means the auditors couldn't even form an opinion on the state of the Department's books, let alone say whether those books were balanced and accurate.

In FY 1999, the Department received a grade equivalent of a D-. This means the auditors could put the books together into some sort of coherence, but not well enough to give the Department a passing grade in Accounting 101.

According to the auditors, if a private company received the same results the Department did on its FY 1999 audit, its stock would plummet. A real life example of this is MicroStrategy, whose stock, on the day a critical and unfavorable audit was announced, fell 62% and unleashed a slew of investor lawsuits.

Sadly, no one really knows when the Department will be able to receive a clean audit.

So, Mr. Speaker, what does this really mean to taxpayers—parents—and children? A few recent incidents illustrate the effects of this financial mis-management.

A Department of Education contract employee pleaded guilty to participating in a scheme to defraud the Department of more than one million dollars in equipment and false overtime. Illegally procured equipment included a 61 inch TV, digital cameras, and Gateway computers for the personal use of Department employees and their families.

However, that's not all. Among the fraudulent overtime claims was a trip to Baltimore to pick-up crab-cakes for another Department employee.

Two more Department employees were recently charged by the Department of Justice with involvement with this scandal, and as many as four other Department employees remain under investigation.

Earlier this year, 39 students were incorrectly notified by the Department that they had won the prestigious Jacob Javits scholarships. The cost of the mistake? Nearly \$4 million dollars.

The theft ring and mis-identified students may only be the tip of the iceberg. Who knows what other kinds of waste, fraud, abuse and mismanagement might be taking place right

now because of the inaction of the AL GORE and Education Secretary Riley?

For example, in one academic year alone, \$177 million dollars in Pell Grants were improperly awarded, and the Department forgave almost \$77 million in student loans for borrowers who falsely claimed to be either permanently disabled or dead.

The Department of Education also maintains a "grantback" account which at one time contained \$750 million. Not surprisingly for an agency that cannot pass a basic audit, most of this money didn't really belong there. So far, the Department has been unable to explain exactly where the money came from, where it went, or why it came and went.

Is a clean audit an unreasonable goal for a federal agency? Bureaucrats would have you believe it is, but we all know it isn't. In fact, businesses large and small comply with this simple measure of fiscal responsibility every day. Any business owner will tell you the importance of a clean audit to maintain the confidence of investors and customers and to prevent waste, fraud and abuse.

The Department has failed to address its financial management for eight years running. Inaction has consequences and our children are paying the price. Fortunately, Republicans have responded to this inexcusable waste of hard-earned taxpayer money devoted to support the education of American children. We have held numerous oversight hearings, continue a rigorous investigation and passed a bill requiring a comprehensive fraud audit of the Department by the General Accounting Office.

We know what needs to be done. Until it is, the taxpayers' investment in the education of American school children will not reap anything close to maximum return.

## OMISSION FROM THE CONGRES- SIONAL RECORD OF TUESDAY, JULY 25, 2000 AT PAGE H-6853

(The following addition to the statement of the gentleman from Wisconsin (Mr. RYAN) was omitted from the CONGRESSIONAL RECORD of Tuesday, July 25, 2000 at page H6853.)

Mr. Speaker, H.R. 4924, the "Truth in Regulating Act of 2000," is a bipartisan, good government bill. It establishes a regulatory analysis function within the General Accounting Office (GAO). This function is intended to enhance Congressional responsibility for regulatory decisions developed under the laws Congress enacts. It is the product of the leadership over the last few years by Small Business Subcommittee Chairwoman on Regulatory Reform and Paperwork Reduction, Sue Kelly.

The most basic reason for supporting this bill is Constitutional: Just as Congress needs a Congressional Budget Office (CBO) to check and balance the executive Branch in the budget process, so it needs an analytic capability to check and balance the Executive Branch in the regulatory process. GAO is a logical location since it already has some regulatory review responsibilities under the Congressional Review Act (CRA).

Article I, Section 1 of the U.S. Constitution vests all legislative powers in the U.S. Congress. While Congress may not delegate its legislative functions, it routinely authorizes Executive Branch agencies to issue rules that implement laws passed by Congress. Congress has become increasingly concerned about its responsibility to oversee agency rulemaking, especially due to the extensive costs and impacts of Federal rules.

During the 105th Congress, the House Government Reform Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, chaired by David McIntosh, held a hearing on Mrs. Kelly's earlier regulatory analysis bill (H.R. 1704), which sought to establish a new, freestanding Congressional agency. The Subcommittee then marked up and reported her bill (H. Rept. 105-441, Part 2). H.R. 1704 called for the establishment of a new Legislative Branch Congressional Office of Regulatory Analysis (CORA) to analyze all major rules and report to Congress on potential costs, benefits, and alternative approaches that could achieve the same regulatory goals at lower costs. This agency was intended to aid Congress in analyzing Federal regulations. The Committee Report stated, "Congress needs the expertise that CORA would provide to carry out its duty under the CRA. Currently, Congress does not have the information it needs to carefully evaluate regulations. The only analysis it has to rely on are those provided by the agencies which promulgate the rules. There is no official, third-party analysis of new regulations" (p. 5).

Unfortunately, CORA supporters in the 105th Congress could not overcome the resistance of the defenders of the regulatory status quo. Opponents argued against creating a new Congressional agency on the basis of fiscal conservatism. By this logic, Congress ought to abolish CBO, as an even more heroic demonstration of fiscal conservatism in action. Of course, most of us recognize that dismantling CBO, however penny wise, would be pound foolish.

In the 106th Congress, Government Reform Subcommittee Chairman David McIntosh and Small Business Subcommittee Chairwoman Sue Kelly, seeking to accommodate the prejudice against a freestanding agency, introduced bills (H.R. 3521 and H.R. 3669, respectively) to establish a CORA function within GAO, which is an existing Legislative Branch agency. McIntosh and Kelly introduced their bills in January and February 2000. On May 10th, the Senate passed its own regulatory analysis legislation, S. 1198, the "Truth in Regulating Act of 2000," by unanimous consent. Like the McIntosh and Kelly bills, the Senate legislation would also establish a regulatory analysis function within GAO.

During the 106th Congress, the Government Reform Committee did not hold a hearing specifically on H.R. 4924 but the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs did hold a June 14th hearing, entitled "Does Congress Delegate Too Much Power to Agencies and What Should be Done About It?" At the hearing, Senator SAM BROWNBACK and Representative J.D. HAYWORTH testified that Congress needs to assume more responsibility for regulations. Dr. Wendy Lee Gramm, Director, Regulatory Studies Program, Mercatus Center, George Mason University and former Administrator of the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB); Alan Raul, partner, Sidley & Austin and former OMB General Counsel; and David Schoenbrod, Professor of Law, New York Law School and Adjunct Scholar, Cato Institute, all affirmed that Congress needs to conduct more oversight of regulations, especially regulatory proposals lacking an explicit delegation of authority from Congress.

Witnesses discussed the need for a CORA function that would assist Congress in assuming more responsibility for agency rules, which now impose over \$700 billion in annual off-budget costs on the American people. Witnesses stressed the need for analytical assistance so that Congress could especially provide timely comment on proposed rules, while there is still an opportunity to influence the cost, scope and content of the final agency action. Witnesses stated that a regulatory analysis function should: (a) take into account Congressional legislative intent; (b) examine other, less costly regulatory and nonregulatory alternative approaches besides those in an agency proposal; and (c) identify additional, non-agency sources of data on benefits, costs, and impacts of an agency's proposal.

Dr. Gramm testified that, "there's clearly a need for more and better analysis that is independent of the agency writing the regulation . . . In my view, Congress cannot carry out its responsibilities effectively without such analysis." She continued by recommending, "a shadow OIRA, and that is to perform independent, high-quality analysis of agency regulations at the proposal stage . . . whether or not the agency has considered the different alternatives, what might be other alternatives . . . I would suggest that all this analysis be done at the proposal stage so that this information can be put into the rulemaking record."

On June 26th, Chairwoman Kelly and Chairman McIntosh introduced H.R. 4744, which made several needed improvements to the Senate-passed S. 1198, along the lines suggested by the witnesses at the June 14th hearing. For example, whereas S. 1198 merely

permits GAO to assist Congress in submitting timely comments on proposed regulations during the public comment period, H.R. 4744 would require GAO to provide such assistance. This was a critical improvement, because it is only by commenting on proposed rules during the public comment period that Congress has any real opportunity to influence the cost, scope, and content of regulation. In addition, unlike the Senate bill, H.R. 4744 would require GAO to review not only the agency's data but also the public's data to assure a more balanced evaluation, analyze not only rules costing \$100 million or more but also rules with a significant impact on small businesses, and examine whether alternatives not considered by the agencies might achieve the same goal in a more cost-effective manner or with greater net benefits.

On June 29th, the Government Reform Committee favorably reported H.R. 4744, with a thorough discussion of issues in its accompanying report (H. Rept. 106-772).

H.R. 4924, introduced July 24th, includes only two—or, more accurately, one and a half—of H.R. 4744's improvements to S. 1198: (a) inclusion, within the scope of GAO's purview, of agency rules with a significant impact on small businesses; and (b) a directive to GAO to submit its independent evaluation of proposed rules within the public comment period, albeit only when doing so is "practicable." House Report 106-772 explains the basis for these improvements. Nonetheless, I am deeply disappointed that we could not persuade the Honorable gentleman from California that timely comments on proposed rules are better than untimely or late comments. But, I understand that, in politics, half a loaf—or, in this case, a fraction of a loaf—may still be better than none. H.R. 4924 is, in my judgment, inferior to H.R. 4744, which is itself a watered down version of the complete reform needed to implement Congress' Constitutional responsibility for regulatory oversight. But, it is a step in the right direction. And, it will give reformers something to build upon in the next Congress.

H.R. 4924 is truly a modest proposal. It does not require or expect GAO to conduct any new Regulatory Impact Analyses (RIAs), cost-benefit analyses, or other impact analyses. However, GAO's independent evaluation should lead the agencies to prepare any missing cost/benefit, small business impact, federalism impact, or any other missing analysis. For example, after the McIntosh Subcommittee insisted that the Department of Labor prepare a missing RIA for its Birth and Adoption Unemployment Compensation ("Baby UI") proposed rule, Labor finally prepared one.

Unfortunately, H.R. 4924 excludes from GAO's purview major rules promulgated by the independent regulatory agencies, such as the Federal Communications Commission, the Federal Trade Commission, and the Securities and Exchange Commission, which regulate major sectors of the U.S. economy. Since the analyses accompanying rules issued by the independent regulatory agencies are often incomplete or inadequate, this omission is unfortunate and makes the bill less useful than either S. 1198 or H.R. 4744.

Here's how H.R. 4924 works. The Chairman or Ranking Member of a Committee of jurisdiction may request that GAO submit an independent evaluation to the Committee on a major proposed rule during the public comment period or on a major final rule within 180 days. GAO's analysis shall include an evaluation of the potential benefits of the rule, the potential costs of the rule, alternative approaches in the rulemaking record, and the various impact analyses.

Congress currently has two opportunities to review agency regulatory actions. Under the Administrative Procedure Act (APA), Congress can comment on agency proposed and interim rules during the public comment period. The APA's fairness provisions require that all members of the public, including Congress, be given an equal opportunity to comment. Late Congressional comments cannot be considered by the agency unless all other late public comments are equally considered. Agencies can ignore comments filed by Congress after the end of the public comment period, as the Department of Labor did after its proposed "Baby UI" rule. Therefore, since GAO cannot be given more time than other members of the public to comment, GAO should complete its review of agency regulatory proposals during public comment period.

Under the CRA, Congress can disapprove an agency final rule after it is promulgated but before it is effective. Unfortunately, Congress has been unable to fully carry out its responsibility under the CRA because it has neither all of the information it needs to carefully evaluate agency regulatory proposals nor sufficient staff for this function. In fact, since the March 1996 enactment of the CRA, there has been no completed Congressional resolutions of disapproval.

In recent years, various statutes (such as the Unfunded Mandates Reform Act of 1995 and the Small Business Regulatory Enforcement Fairness Act of 1996) and executive orders (such as President Reagan's 1981 Executive Order 12291, "Federal Regulation," and President Clinton's 1993 Executive Order 12866, "Regulatory Planning and Review") have mandated that Executive Branch agencies conduct extensive regulatory analyses, especially for economically significant rules having a \$100 million-or-more effect on the economy or a significant impact on small businesses. Congress, however, does not have the analytical capability to independently and fairly evaluate these analyses.

To assume oversight responsibility for Federal regulations, Congress needs to be armed with an independent evaluation. What is needed is an analysis of legislative history to see if there is a non-delegation problem, such as in the Food and Drug Administration's proposed rule to regulate tobacco products, which was struck down by the Supreme Court in *FDA v. Brown & Williamson*, or backdoor legislating, such as in the Department of Labor's "Baby UI" rule, which provides paid family leave to small business employees, even though Congress in the Family and Medical Leave Act said no to paid family leave and any coverage of small businesses.

Sometimes the quickest (or only) way to find out that an agency has ignored Congressional intent or failed to consider less costly or non-

regulatory alternatives, is to examine non-agency (i.e., "public") data and analyses. It is for that reason that, under H.R. 4744, GAO would be required to consult the public's data in the course of evaluating agency rules. Although H.R. 4924 does not require GAO to review public data, neither does it forbid or preclude GAO from doing so. I bring this up, because some hope that H.R. 4924 implicitly contains a gag order, forbidding GAO to consult any analyses or data except those supplied by the agency to be reviewed. This reading of H.R. 4924 would defeat the whole purpose of the bill, which is to enable Congress to comment knowledgeably about agency rules from the standpoint of a truly independent evaluation of those rules.

Instructed by GAO's independent evaluations, Congress will be better equipped to review final agency rules under the CRA. More importantly, Congress will be better equipped to submit timely and knowledgeable comments on proposed rules during the public comment period. I say this, notwithstanding the words "where practicable," which some CORA foes hope will ensure that all GAO analyses of proposed rules are untimely and, therefore, worthless. I am confident that, despite the "where practicable" language, GAO will want to please rather than annoy its customers and employers, and will not fail to help Members of Congress submit timely comments on regulatory proposals.

Thus, even though a far cry from the original idea of an independent CORA agency, and although inferior to the Kelly-McIntosh bill reported by the Government Reform Committee, H.R. 4924 will increase the transparency of important regulatory decisions, promote effective Congressional oversight, and increase the accountability of Congress. The best government is a government accountable to the people. For America to have an accountable regulatory system, the people's elected representatives must participate in, and take responsibility for, the rules promulgated under the laws Congress passes. H.R. 4924 is a meaningful step towards Congress's meeting its regulatory oversight responsibility.

#### SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 6, 1999, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

#### FARM ECONOMY IN THE UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Minnesota (Mr. MINGE) is recognized for 5 minutes.

Mr. MINGE. Mr. Speaker, I rise this afternoon to address this Chamber on the topic of the farm economy in the United States and the agricultural policies that we have adopted in Congress.

The 1996 farm bill, generally called the Freedom to Farm Act, has been effective in one respect, and that is it has given farmers flexibility to plant

what they are interested in raising and not be tied as closely to particular commodities by the design of the farm bill itself.

Unfortunately, the Freedom to Farm Act has become a freedom to fail act, and we have farmers that are exiting from farming at a record rate. We have prices for commodities in this country that have dropped to levels that are as low as they have been in 100 years, if we adjust for inflation. We constantly hear about the plight of those who were producing oil and now we have gasoline at \$1.50 to \$1.75 a gallon throughout the country.

Well, if farmers had seen their prices go up without any adjustment for inflation, they at least would be paying \$2.50 for corn, \$3.00 for wheat, and higher amounts for other products. Tragically, in the United States, in the midst of a very robust and healthy and growing economy, one sector of the American economy that is hurting severely is agriculture. So I am pleased to announce that today I have joined with my colleague, the gentleman from North Dakota (Mr. POMEROY), and we have introduced legislation that is the Family Farm Safety Net Act of 2000.

The purpose of this legislation is to provide an outline or guide to the type of prices that are necessary in order to enable a farm to survive in the United States.

Since 1996, we can see what has happened to the prices for corn, wheat and soybeans. Prices have dropped precipitously. In 1996, corn was at \$2.71 a bushel. Here we are in the summer of the year 2000, corn is roughly half that price at most of the elevators in the Midwest.

□ 1715

The drop in the price of wheat has not been quite as dramatic, but it still has come down by roughly \$1.80 a bushel, and the price for a bushel of soybeans has come down by about \$2.50 a bushel.

This certainly is not success in terms of agricultural policy.

In terms of flexibility, we also have a very frustrating situation. This chart shows what has happened in terms of the planting of wheat compared to the planting of soybeans. Soybeans, according to agricultural economists, are favored by the current situation. Wheat, by comparison, is not as advantageous to raise. So as a consequence, we have seen the acreage of wheat, it has been reduced by thousands of acres, and at the same time, the planting of soybeans has gone up by about a corresponding amount.

Mr. Speaker, we need to reestablish parity among the various crops. One way to do this is to take the loan rate for the marketing loans and harmonize the loan rates so that the loan rates for soybeans, for corn, for wheat, barley and other crops are neutral, and at the